

DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

1 DISABILITY RIGHTS ADVOCATES  
SID WOLINSKY (CA Bar No. 33716)  
2 JENNIFER WEISER BEZOZA (CA Bar No. 247548)  
MARY-LEE KIMBER (CA Bar No. 239086)  
3 2001 Center Street, Fourth Floor  
Berkeley, California 94704-1204  
4 Telephone: (510) 665-8644  
Facsimile: (510) 665-8511  
5 TTY: (510) 665-8716  
Email: [general@dralegal.org](mailto:general@dralegal.org)

6 Attorneys for Plaintiffs

9 CALIFORNIA FOUNDATION FOR  
INDEPENDENT LIVING CENTERS;  
10 CALIFORNIANS FOR DISABILITY  
RIGHTS, INC.; and MARIAN GRAY,

12 Plaintiffs,

13 v.

14 CITY OF OAKLAND; OFFICE OF  
EMERGENCY SERVICES of the Oakland  
15 Fire Department; DEPARTMENT OF  
HUMAN SERVICES of the City of Oakland;  
16 OFFICE OF PARKS AND RECREATION of  
the City of Oakland; RENEE A. DOMINGO,  
17 in her official capacity as Director of the  
Office of Emergency Services; ANDREA  
18 YOUNGDAHL, in her official capacity as  
Director of the Department of Human  
19 Services; AUDREE JONES-TAYLOR, in her  
official capacity as Director of the Office of  
20 Parks and Recreation; and DEBORAH  
EDGERLY, in her official capacity as City  
21 Administrator of the City of Oakland;

23 Defendants.

Case No.: C 07 04608 EDL

**FIRST AMENDED COMPLAINT FOR  
VIOLATION OF CIVIL RIGHTS &  
DISCRIMINATION AGAINST PEOPLE  
WITH DISABILITIES: AMERICANS  
WITH DISABILITIES ACT; SECTION  
504 OF THE REHABILITATION ACT OF  
1973; CALIFORNIA CIVIL CODE § 54, *et  
seq.*; CALIFORNIA GOVERNMENT  
CODE § 11135, *et seq.*; DECLARATORY  
RELIEF**

1 Plaintiffs, by their attorneys Disability Rights Advocates, as and for their complaint  
2 against Defendants, allege as follows:

### 3 INTRODUCTION

4 1. This case arises out of discrimination by Defendants towards the over 84,000  
5 residents of the City of Oakland with disabilities. The neglect of these disabled residents is the  
6 product of Defendants' failure to sufficiently plan to meet the unique needs of people with  
7 disabilities during an emergency. Potential shelter facilities are physically inaccessible and mass  
8 care and shelter policies, procedures, and plans for people with disabilities are inadequate or non-  
9 existent.

10 2. Many of the facilities on Oakland's list of potential emergency shelters are  
11 inaccessible to people with disabilities. The problems include inaccessible entrances, paths of  
12 travel, bathrooms, showers, signage, and parking.

13 3. In addition, Oakland does not have a current mass care and shelter plan that  
14 addresses the needs of people with disabilities; a database of potential shelters with current and  
15 comprehensive accessibility information; an inventory of shelter supplies; or arrangements with  
16 community-based organizations, pharmacies, or providers of medical supplies and equipment.

17 4. Recent catastrophic disasters, such as 9/11 and Hurricanes Katrina and Rita, have  
18 made local government officials acutely aware of the critical need to plan to provide mass care  
19 and shelter services to large numbers of impacted citizens. They are also cognizant of the  
20 barriers that people with disabilities have faced in past disasters when they tried to access  
21 emergency shelter services. Local officials have acknowledged that Oakland needs to improve  
22 its mass care and shelter planning to address the needs of people with disabilities. Yet, the City  
23 of Oakland has been dragging its feet for years, relying on an incomplete plan that is twenty  
24 years old.

25 5. The result of Oakland's failure to adequately plan to meet the shelter needs of  
26 people with disabilities is that it cannot assure that when a disaster happens, the City will be able  
27 to provide acceptable mass care and shelter services to all residents with disabilities. Oakland's  
28 inability to provide critical emergency services to people with disabilities means that the lives of  
this vulnerable population are at extreme risk.

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6. Oakland's failure to address the emergency needs of men, women, and children with disabilities is particularly egregious because geographical, environmental and demographic factors make Oakland exceptionally vulnerable to a number of hazards likely to require evacuation to emergency shelters. Oakland lies within the San Andreas fault system and straddles the Hayward fault, making earthquakes a constant threat. Oakland is also at risk for uncontrolled fires, flooding, landslides, hazardous waste accidents, and terrorism-related emergencies.

7. In the last twenty-five years, the City of Oakland has experienced eight Presidential-declared disasters, including the 1989 Loma Prieta earthquake and 1991 Oakland Hills Firestorm. During many of these disasters, the homes of Oakland residents were destroyed, requiring mass evacuations and the provision of emergency shelter services

8. When natural or man-made disasters occur, disabled men women, and children are among the people most likely to suffer because they cannot access critical information, transportation, or evacuation services. They are also more likely to use emergency shelters because they are disproportionately low income and do not have other options.

9. Because of Defendants' knowing failure to adequately survey potential shelter sites and revise its mass care and shelter policies and procedures to address the needs of people with disabilities, Plaintiffs have been denied equal access to Oakland's shelter facilities, programs, and services, in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, California Civil Code § 54, *et seq.*, and California Government Code § 11135. Plaintiffs seek injunctive and declaratory relief as to these ongoing violations of federal and state civil rights laws.

### JURISDICTION

10. This is an action for declaratory and injunctive relief, brought pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as well as California Civil Code § 54 *et seq.* and California Government Code § 11135, *et seq.*

11. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

12. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

## VENUE

## PARTIES

15. CFILC has been a leader in advocating for the rights of people with disabilities in emergency preparedness. It has organized conferences, produced publications, participated in statewide partnerships, and engaged in legislative advocacy to improve emergency preparedness for people with disabilities. Earlier this month, CFILC launched a coalition called the “Access 2 Readiness Coalition” to keep the disability community informed about emergency preparedness issues. CFILC has actively participated in statewide disaster planning so that it can help prepare emergency response and shelter organizations to deal successfully with disability-related needs in a disaster. CFILC also provides guidance to the individual ILCs in their efforts to prepare their constituents for an emergency. CFILC’s programmatic interests, activities, and expenditures on emergency preparedness are directly and adversely affected by Oakland’s failure to appropriately plan to meet the emergency shelter needs of people with disabilities.

16. Organizational Plaintiff Californians for Disability Rights (“CDR”) is the oldest and largest membership organization of people with disabilities in California. It currently has over 600 members. CDR’s objectives are to improve the quality of life for all persons with

*CFILC, et al., v. City of Oakland, et al.* Case No.: C 07 04608 EDL  
FIRST AMENDED COMPLAINT

disabilities through education and training and to work to remove access barriers through advocacy and changes in public policy. A major focus of CDR for the past twenty-five years has been improving access to governmental programs and services for people with disabilities and ensuring that local agencies and state entities obey the laws protecting people with disabilities. Many of CDR's members are active on emergency preparedness issues within their communities. Accordingly, the interests that CDR seeks to protect through this litigation are germane to its mission and purpose. Further, CDR's members include people with disabilities who reside in Oakland and have been harmed and continue to experience harm because of Defendants' failure to appropriately plan to meet the emergency shelter needs of people with disabilities.

17. Plaintiff MARIAN GRAY is a citizen of the United States and a resident of the City of Oakland. Ms. Gray is a sixty-one year old polio survivor who uses a power wheelchair full-time and a ventilator at night. She is a qualified person with a disability within the meaning of all applicable nondiscrimination law. Ms. Gray is concerned that the City of Oakland is expending public funds for emergency preparedness in a manner that discriminates against people with disabilities. In particular, she is concerned that Oakland is not sufficiently prepared to meet the emergency shelter needs of people with disabilities. Ms. Gray is especially worried that Oakland will be unable to meet her specific emergency needs because it cannot ensure: (1) that there will be a fully accessible shelter that she can go to that will have sufficient electrical power for her to charge her wheelchair and use her ventilator, and (2) that assistance in securing her daily and emergency medications will be provided.

18. Defendant CITY OF OAKLAND is placed by California's State Emergency Plan and Standardized Emergency Management System ("SEMS")<sup>1</sup> at the first level of response for meeting the disaster needs of people in its jurisdiction. It is responsible for the protection of life, property, and the environment during a declared emergency. In particular, the City of Oakland is

<sup>1</sup> SEMS is a system required by California Government Code § 8607 for managing the response to multi-agency and multi-jurisdictional emergencies in California. It helps unify all elements of California's emergency management organization into a single integrated system. Local government agencies must use SEMS to be eligible for State funding of certain response-related costs resulting from a disaster.

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1 responsible for preparing for and providing emergency care and shelter to *all* people made  
2 homeless by a natural disaster or other emergency.

3 19. Defendant OFFICE OF EMERGENCY SERVICES (“OES”) is a division of the  
4 Oakland Fire Department and is responsible for emergency preparedness, planning, education,  
5 and training to ensure a comprehensive, coordinated response by the City to both natural and  
6 human-caused disasters. OES shares responsibility for Oakland’s Mass Care and Shelter Plan  
7 with the Department of Human Services and the Office of Parks and Recreation.

8 20. Defendant DEPARTMENT OF HUMAN SERVICES (“DHS”) of the City of  
9 Oakland is responsible for supporting the City’s mass care and shelter effort in concert with the  
10 Office of Parks and Recreation, the American Red Cross, and Oakland Unified School District,  
11 through the Oakland Office of Emergency Services and the City’s SEMS protocol. It is  
12 specifically charged with assessing the availability of City operated shelters and emergency  
13 supplies. DHS shares responsibility for Oakland’s Mass Care and Shelter Plan with the Oakland  
14 Office of Emergency Services and the Office of Parks and Recreation.

15 21. Defendant OFFICE OF PARKS AND RECREATION (“OPR”) of the City of  
16 Oakland is responsible for coordinating the opening and operations of local shelters during an  
17 emergency with the American Red Cross, the Department of Human Services, and Oakland  
18 Unified School District. It is also responsible for coordinating the opening of Disaster  
19 Application Centers with the Oakland Office of Emergency Services and the State Office of  
20 Emergency Services. OPR shares responsibility for Oakland’s Mass Care and Shelter Plan with  
21 the Oakland Office of Emergency Services and the Department of Human Services.

22 22. Defendant RENEE A. DOMINGO is the Director of the Oakland Office of  
23 Emergency Services. She is sued in her official capacity.

24 23. Defendant ANDREA YOUNGDAHL is the Director of the Department of Human  
25 Services of the City of Oakland. She is sued in her official capacity.

26 24. Defendant AUDREE JONES-TAYLOR is the Director of the Office of Parks and  
27 Recreation of the City of Oakland. She is sued in her official capacity.  
28

25. Defendant DEBORAH EDGERLY is the Oakland City Administrator and, as such, is the City's chief administrative officer. As City Administrator, Ms. Edgerly has the power and duty to execute and enforce all laws, ordinances, and policies of the City Council and to administer the affairs of the City. She is sued in her official capacity.

## FACTS

### A. The City of Oakland Is Exceptionally Vulnerable to Emergencies

26. Due to location, geography and history, Oakland is susceptible to the following emergency conditions:

- a. Earthquakes on at least three known active faults;
- b. Urban firestorms in the hill areas;
- c. Multi-alarm fires from old building stock;
- d. Severe weather conditions resulting in flooding, landslides, tree damage and power outages;
- e. Hazardous material spills or toxic releases caused by transportation and/or industrial accidents;
- f. Civil disturbance; and
- g. Terrorist incidents.

27. Since 1983, the City of Oakland has experienced eight Presidential-declared disasters, including the 1989 Loma Prieta earthquake, 1991 Oakland Hills Firestorm, the 1997 El Nino winter storms, and the 1998 La Nina winter storms. During many of these disasters, the homes of Oakland residents were destroyed, requiring mass evacuations and the provision of emergency shelter services. For instance, following the Loma Prieta earthquake, more than 12,000 Oakland residents were left homeless and more than 18,000 homes were damaged. Following the 1991 Oakland Hills Firestorm, more than 3,000 homes were destroyed.

28. Oakland has been shaken by moderate-to-major earthquakes approximately sixty times in the recorded history of the area. United States Geological Survey ("USGS") scientists have concluded that there is a 62% probability of one or more major earthquakes (magnitude 6.7 or greater) striking the Bay Area between the years 2003 and 2032.

29. The Hayward fault has the highest probability of producing a major quake. In fact, the Hayward fault is considered "one of the most hazardous in the world" because of its

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1 high “slip rate;” its demonstrated ability to generate large, surface-rupturing earthquakes; and its  
2 location through a heavily urbanized area.

3 30. The Association of Bay Area Governments (“ABAG”), in a 1996 report entitled  
4 “Shaken Awake,” predicted that, if there were an earthquake on the Hayward fault line in the  
5 next thirty years, the shelter population in Oakland would be a minimum of 17,500 people and  
6 could be as large as 42,000 people.

7 31. As one of the oldest cities in the state, Oakland’s densely populated jurisdiction  
8 (7,126 persons per square mile in comparison to 217 persons per square mile in California)  
9 includes old building stock (much of which is un-reinforced masonry) and an aging  
10 infrastructure. Un-reinforced masonry (“URM”) buildings are the structures most likely to  
11 collapse from strong ground shaking or to require demolition afterward. There are  
12 approximately 870 buildings on Oakland’s list of potentially hazardous URM buildings.

13 32. It is estimated that, following an earthquake, up to 92% of the URM buildings in  
14 Alameda County will be uninhabitable. Many of these older buildings provide low income  
15 housing. Because of the rapid rise in housing costs in recent years, there are fewer alternatives to  
16 these buildings when they become uninhabitable due to a disaster. The result is that emergency  
17 shelters will need to be kept open for a longer period of time. This is precisely what happened  
18 following the Loma Prieta earthquake, which destroyed 1300 units of Oakland’s low income  
19 housing stock.

20 33. Oakland is also at a higher risk for structural fires than most other jurisdictions in  
21 California because of its relatively old and dense development pattern. In the past, strong  
22 earthquakes in the Bay Area have been followed by fires. The threat of extensive fire damage is  
23 greatest following a major earthquake, at which time the severity of fires may be compounded by  
24 the accompanying failure of water mains.

25 34. The Oakland hills are a “fire-dependent ecosystem,” meaning that wildfires occur  
26 there every year, especially in late summer and early fall when the area’s natural vegetation is  
27 dry and extremely flammable. Large fires in the Oakland Hills are anticipated by city officials  
28 every ten to twenty years.

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35. Given that 42.6% of the land in Alameda County is located in “Wildland Urban Interface Wildfire Threat” areas, an uncontrollable wildfire could threaten a staggering amount of housing. During the first three hours of the 1991 Oakland Hills Firestorm, the fire consumed one house every eleven seconds. It ultimately resulted in 25 deaths, 150 injuries, and the destruction of more than 3,000 homes, making it the costliest wildfire in United States history. Due to repair and rebuilding, the number of people and homes currently in harm’s way is roughly the same as it was before the 1991 Firestorm.

36. Oakland also faces other potential hazardous conditions that have forced evacuations and may necessitate emergency shelter services. Excess rain has and will likely continue to result in flooding, landslides, tree damage, and power outages. Over twenty significant landslides have occurred in Oakland during the last seven decades. Most hillside development in Oakland predates the imposition of grading and slope requirements, making homes more susceptible to landslide damage.

37. As a port city with a great deal of industry, Oakland is also prone to industrial accidents, such as hazardous material spills, which would require mass evacuations. Finally, as a large city in the Bay Area with a dense population, Oakland is a potential terrorist target. In July 2007, the United States Department of Homeland Security designated the Bay Area as one of the six urban areas in the country most at risk for terrorist attacks.

#### **B. Emergencies Disproportionately Affect Persons with Disabilities**

38. When a disaster occurs, people with disabilities and the elderly are more likely to suffer its direct impact. Many people with disabilities are unable to evacuate themselves, see approaching danger, or hear announcements to evacuate, making them especially vulnerable to natural disasters. Evacuation announcements are often made using loudspeakers on patrol cars and television broadcasts often fail to include captions, leaving the deaf and hard of hearing without critical emergency information. The lack of accessible transportation makes it extremely difficult for people with disabilities to evacuate and/or travel to emergency shelter.

39. People with disabilities are disproportionately dependent on electricity because they need to power much of their assistive technology, such as wheelchairs, scooters, and communications software. In addition, people with certain disabilities are temperature-sensitive

1 and cannot be exposed to extreme temperatures, which may result from power outages. Thus,  
2 utility outages alone may require people with disabilities to seek emergency shelter, if available.

3 40. Past disasters have shown that low-income families are nearly ten times more  
4 likely to seek public shelter in a disaster versus more moderate to upper income families. People  
5 with more resources generally can find alternatives to public shelters, whereas people who have  
6 a low income cannot. In addition, low-income people are more likely to live in multi-family  
7 homes, which are more vulnerable to collapse because they are not typically reinforced. Because  
8 people with disabilities are disproportionately low-income, they tend to be disproportionately  
9 represented among shelter residents.

10 41. In addition to the people with disabilities who routinely reside in Oakland, there  
11 will be untold additional numbers of people with injuries and temporary disabilities who will  
12 need access to temporary shelter and support services in an emergency.

### 13 **C. Experiences of People With Disabilities in Past Disasters**

14 42. After the Loma Prieta earthquake in 1989, many of the first aid stations in shelters  
15 lacked the capacity to keep certain life-sustaining medications. Food, water, supplies, and  
16 disaster relief applications were disseminated in areas of shelters that were inaccessible to  
17 wheelchair users.

18 43. After the 1994 earthquake in Northridge, California, trash and glass were  
19 scattered everywhere, making it extremely difficult for wheelchair users and the visually  
20 impaired to navigate the streets. Elevators were not functioning and there was very little  
21 accessible transportation available, making it nearly impossible for most people with disabilities  
22 to get to shelters.

23 44. Many people with disabilities who were able to get to emergency shelters after the  
24 Northridge earthquake were turned away when they arrived. Some people were inappropriately  
25 referred to medical facilities when shelter personnel misidentified their disabilities as acute  
26 medical conditions. A deaf person was denied services by a shelter because no one understood  
27 sign language and individuals with cerebral palsy and multiple sclerosis were denied admission  
28 to shelters because they were perceived as being under the influence of drugs or alcohol. Other  
people with disabilities learned when they arrived at shelters that guide dogs and service dogs

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1 were not allowed, they could not get to the bathrooms because they were located upstairs, or  
2 shower stalls were inaccessible.

3 45. The winter storm flooding in Oakland in 1997 required the evacuation of over  
4 150,000 Californians, 1,000 of whom resided in nursing facilities or home health care settings.  
5 As shelter populations grew, available medical resources became overwhelmed, placing  
6 medically fragile individuals at risk.

7 46. During the 2003 wildfires in Southern California, many individuals who require  
8 mobility aids to walk were evacuated and brought to emergency shelters without those items. As  
9 a result, they were restricted to their beds. Volunteers had to carry them to the restrooms, when  
10 needed. Evacuation planning did not include vehicles that could also transport wheelchairs and  
11 walkers so evacuees with disabilities could maneuver throughout the shelters without assistance.

12 47. Many of the shelters used in the 2003 wildfires were inaccessible to people with  
13 mobility disabilities. Those who use service animals were not initially allowed to bring their  
14 animals into the shelters. The deaf were unable to receive critical information in many of the  
15 shelters because there were no interpreters available, they couldn't understand the public address  
16 systems, and televisions were not captioned. People who rely on specialized medication and did  
17 not have prescriptions or a supply with them were placed in danger due to medical conditions.  
18 Emergency telephone access was provided through prior arrangements with a vendor that used a  
19 trailer that had no telephones located within reach of people using wheelchairs and no  
20 telecommunication devices for the deaf.

21 48. After Hurricane Katrina, community-based organizations that serve people with  
22 disabilities complained they were unable to obtain information about where emergency shelters  
23 were opening, how to transport consumers there, or what types of disabilities the shelters could  
24 accommodate. As a result, many people with disabilities were transported to nursing homes  
25 where they could not maintain their independence.

26 49. Many of the shelters used during Hurricane Katrina were not physically  
27 accessible to people with disabilities. Some shelters refused services to people with service  
28 animals and obvious disabilities. Almost all shelters were unable to make their programs  
accessible to people with disabilities or to meet basic living needs of people with disabilities.

For example, essential medical services were offered on upper floors of shelters with no elevator access. People who had lost their wheelchairs during evacuation had no way to stand in line for shelter services. In addition, shelters were not equipped with durable medical equipment, medications for people with mental illness, or insulin for diabetics. Most shelters had no sign-language interpreters and no written announcements, which meant that deaf evacuees were denied access to the information conveyed over loudspeakers.

**D. The Elements of Comprehensive Mass Care and Shelter Planning for People with Disabilities**

50. The disability community has been reporting problems with emergency services for decades. In order to prevent the above-described experiences of people with disabilities during disasters, emergency planning must take into account the unique needs of people with disabilities, particularly with respect to mass care and shelter.

51. A mass care and shelter plan must describe the roles and responsibilities of city agencies in the provision of mass care, establish potential shelter locations, and list the tasks necessary to support shelter sites and ensure that services and information will be accessible to people with disabilities.

52. In September 2003, Alameda County Operational Area funded the development of a planning guide for local governments, entitled “A Guide for Local Jurisdictions in Care and Shelter Planning.” The guide details all of the components that are needed for a city to appropriately plan to provide mass care and shelter during a disaster. The following are among those components:

- a. Identify and survey shelter facilities;
- b. Designate primary and secondary shelter facilities based on size and accessibility;
- c. Develop a plan to provide people with disabilities with information about accessible sheltering options;
- d. Develop statements of understanding with all potential shelter facilities;

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- 1 e. Develop a statement of understanding with the American Red Cross;
- 2 f. Provide training to city employees who will staff and manage disaster
- 3 shelters;
- 4 g. Develop plans to make accommodations where facilities have barriers that
- 5 impede full access for people with disabilities;
- 6 h. Conduct a pre-occupancy inventory of potential shelter sites to determine
- 7 what operational supplies may already be in place and develop a plan to obtain needed shelter
- 8 supplies and equipment;
- 9 i. Establish vendor agreements with local pharmacies to provide emergency
- 10 replacement prescriptions and medical equipment for the elderly and people with disabilities
- 11 (e.g., orthopedic braces, wheelchairs, breathing aids, and colostomy bags);
- 12 j. Plan for the storage of medications;
- 13 k. Pre-identify shelter sites with back-up generators;
- 14 l. Develop a resource list of community mental health providers and
- 15 services to call upon, if needed;
- 16 m. Identify local para-transit resources for the transport of wheelchair users;
- 17 n. Develop a plan to address the information needs of persons who are deaf,
- 18 blind, or non-English speaking;
- 19 o. Identify and develop relationships with community-based organizations
- 20 that support vulnerable populations so that they can assist with care and shelter operations; and
- 21 p. Provide disaster planning information to licensed care facilities to support
- 22 their emergency preparedness efforts.
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53. The City of Oakland's SEMS Emergency Plan,<sup>2</sup> dated August 2002, requires that all potential shelter sites be surveyed and meet all Americans with Disabilities Act ("ADA") access requirements, which include, but are not limited to:

- a. accessible entrances/exits and paths of travel to and within the shelter;
- b. accessible parking close to the shelter;
- c. accessible restrooms and showers (if offered); and
- d. accessible signage (e.g., Braille) for persons with vision disabilities.

When potential shelter facilities are assessed, the City must determine the level of ADA compliance and the need for any modifications. City employees must be trained in what constitutes accessible facilities so that they can appropriately evaluate potential shelter sites.

54. Physical access problems are often created by policies and procedures in place at the shelter. Accordingly, policies and procedures for emergency shelter services must take into account the needs of persons with disabilities. There must be policies and procedures for, but not limited to, the following:

- a. Providing para-transit or other accessible form of transportation from inaccessible shelters to accessible shelters;
- b. Placing key services, such as the infirmary, in accessible areas;
- c. Ensuring sufficiently wide paths of travel through sleeping areas;
- d. Permitting service animals within emergency shelters; and
- e. Providing information in accessible formats for people with sensory and cognitive disabilities.

55. City employees who manage and staff shelters must also be trained to be sensitive and responsive to the needs of people with disabilities, from intake to the provision of medications and supplies to the dissemination of information.

<sup>2</sup> Oakland's SEMS plan is distinct from its outdated Mass Care and Shelter Plan.

**E. Oakland Has Not Adequately Planned to Meet the Mass Care and Shelter Needs of People with Disabilities**

56. Oakland is not prepared to meet the unique needs of people with disabilities during an emergency; potential shelter facilities are physically inaccessible and policies, procedures, and plans for people with disabilities are inadequate or non-existent.

57. While Oakland has identified a number of potential shelter facilities (i.e., churches, schools, and park recreation centers), the City's shelter list does not have current contact information for those facilities. More importantly, the City lacks comprehensive information about the accessibility of potential sites. Without this information, Oakland is unable to provide people with disabilities with information about accessible sheltering options. Nor can it ensure that it will be able to provide equal access to its shelter services to people with disabilities.

58. The result of Oakland's failure to maintain current and comprehensive information about potential shelter sites is that Oakland has designated shelter facilities that are not physically accessible. For example, some of the facilities on the list have multiple levels with no elevators, no Braille signage, doorways that are too narrow, or restrooms and/or showers that are completely inaccessible to wheelchair users.

59. Oakland has also failed to revise its Mass Care and Shelter Plan from the 1980s to address the needs of people with disabilities. As a result, the City lacks many, if not all, of the planning elements described above. For example, Oakland has:

- a. No plan for modifying shelters that do not meet ADA requirements so that people with disabilities will have full access to all services being provided at the shelter facility;
- b. No memoranda of understanding between the City and potential shelter sites;
- c. No inventory of shelter supplies;
- d. No arrangements to provide replacement prescriptions or medical equipment;

- e. No arrangements for the transportation of people with disabilities from inaccessible shelters to accessible shelters;
- f. No plan to meet the information needs of people who are deaf, blind, or non-English speaking;
- g. No arrangements with community-based organizations that service special needs populations;
- h. No plan to meet the needs of people who choose to home-shelter on their property;
- i. No plans to assist the County in serving people with disabilities who are placed in the medically fragile shelter; and
- j. No list of residential care facilities that have viable plans for continued care and evacuation of clients in an emergency.

60. The City is aware that it needs to revise and update its Mass Care and Shelter Plan. In a comprehensive review of the City's emergency response capabilities in November 2005, directed by the Oakland City Council, the City found that it needs to improve its emergency planning to more fully address special needs populations. The Office of Emergency Services indicated that it plans to address the needs of people with disabilities in its next revision of the City's Mass Care and Shelter Plan.

61. In November 2006, an engineering design firm submitted a proposal for the preparation of a care and shelter plan for the City of Oakland that would address, among other things, the needs of people with disabilities. Almost one year later, Oakland has yet to contract with that firm or any other company for assistance with the development of its care and shelter plan. Nor has it developed or begun implementing such a plan on its own. Without a current mass care and shelter plan, Oakland cannot provide any assurance that, if a natural disaster happened tomorrow, it is prepared to meet the unique shelter needs of people with disabilities.

62. Oakland cannot depend on the American Red Cross to relieve it of its planning responsibilities. The City must be prepared to provide mass care and shelter services prior to the arrival of support from the American Red Cross, which may take as long as five days. If and when the American Red Cross takes over management of emergency shelters in Oakland, the City is still responsible for meeting the needs of people with disabilities.

**FIRST CAUSE OF ACTION**  
**(Violation of Americans with Disabilities Act)**

63. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through 62, inclusive.

64. Title II of the Americans with Disabilities Act (“ADA”) prohibits a public entity from excluding a person with a disability from participating in, or denying the benefits of, the goods, services, programs and activities of the entity or otherwise discriminating against a person on the basis of disability. 42 U.S.C. § 12132.

65. The implementing regulations of Title II of the ADA require that, in providing any aid, benefit or service, a public entity may not deny a qualified individual with a disability the opportunity to benefit from any such aid, benefit or service. 28 C.F.R. § 35.130(b)(1)(i).

66. The Title II implementing regulations also state that “a public entity may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program or activity with respect to individuals with disabilities.” 28 C.F.R. § 35.130(b)(4)(i)-(ii).

67. The Title II implementing regulations further provide that an individual with a disability shall not be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities. 28 C.F.R. §35.149.

68. Plaintiff MARIAN GRAY is a qualified individual with a disability within the meaning of the ADA.

69. By failing to plan to meet the mass care and shelter needs of people with disabilities, Defendants have excluded them from participation in, denied them the benefits of, and discriminated against them in its mass care and shelter program and services.

69. Defendants have failed to develop policies, practices and/or procedures that address the mass care and shelter needs of individuals with disabilities, and, as such, Defendants deny individuals with disabilities the opportunity to benefit from its mass care and shelter program and services.

70. Defendants have selected facilities to be used as emergency shelters that are physically inaccessible or unusable by people with disabilities and therefore have the effect of excluding individuals with disabilities from and denying them the benefits of the City's mass care and shelter program and services.

71. Defendants' conduct constitutes ongoing and continuous violations of the ADA, and unless restrained from doing so, Defendants will continue to violate the ADA. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at law. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308 of the ADA (42 U.S.C. § 12188), as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**SECOND CAUSE OF ACTION**  
**(Violation of Section 504 of the Rehabilitation Act of 1973)**

72. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through 71, inclusive.

73. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the implementing regulations, prohibit discrimination against people with disabilities by recipients of federal funding. Section 504 provides, in pertinent part, that:

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

74. Plaintiff MARIAN GRAY is a qualified individual with a disability within the meaning of Section 504.

75. Defendants receive federal financial assistance to provide mass care and shelter services during an emergency.

76. By failing to plan to meet the mass care and shelter needs of people with disabilities, Defendants have excluded them from participation in, denied them the benefits of, and discriminated against them in programs and activities that receive federal financial assistance, solely by reason of their disabilities, in violation of 29 U.S.C. § 794 and the implementing regulations.

77. As a proximate result of Defendants' violations of Section 504 of the Rehabilitation Act, Plaintiffs have been injured as set forth herein.

78. Plaintiffs have no adequate remedy at law and unless the relief requested herein is granted, Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied access to Defendants' mass care and shelter program. Consequently, Plaintiffs are entitled to injunctive relief, as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**THIRD CAUSE OF ACTION**  
**(Violation of California Civil Code § 54, *et seq.*)**

79. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through 78, inclusive.

80. The emergency shelter facilities under the control of Defendants constitute places of public accommodation and/or places to which the general public is invited within the meaning of California Civil Code §§ 54.1 and 54.3.

81. Defendants have and are violating Plaintiffs' rights under California Civil Code § 54, *et seq.*, by denying Plaintiffs full and equal access to and use and enjoyment of emergency shelter facilities and services due to the acts and omissions alleged herein.

82. Defendants' discriminatory conduct alleged herein includes, *inter alia*, the violation of the rights of persons with disabilities set forth in Title II of the ADA and accompanying regulations, all of which have been expressly incorporated into California Civil Code § 54, *et seq.*, since January 1, 1993.

83. Defendants' actions constitute a violation of Plaintiffs' rights under California Civil Code § 54, *et seq.*, and therefore Plaintiffs are entitled to injunctive relief remedying the discrimination.

84. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**FOURTH CAUSE OF ACTION  
(Violation of California Government Code § 11135, *et seq.*)**

85. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through 84, inclusive.

86. California Government Code § 11135 and the regulations promulgated thereunder prohibit discrimination against people with disabilities by any program or activity funded by the State. Section 11135 provides, in pertinent part, that:

No person in the State of California shall, on the basis of . . . disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the State.

87. Defendants receive financial assistance from the State of California to provide mass care and shelter services during an emergency.

88. Through their actions and inactions, by refusing to provide Plaintiffs full and equal access to their emergency mass care and shelter services, Defendants have denied Plaintiffs the benefits of, or unlawfully subjected them to discrimination, in such programs and activities solely because of their disabilities in violation of Government Code § 11135 and the regulations promulgated thereunder.

89. As a proximate result of Defendants' violations of § 11135, Plaintiffs have been injured as set forth herein.

90. Plaintiffs have no adequate remedy at law. Unless the relief requested herein is granted, Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied full access to Defendants' facilities, programs, services, and activities on the basis of disability. Consequently, Plaintiffs are entitled to injunctive relief and reasonable attorneys' fees and costs.

DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2 **FIFTH CAUSE OF ACTION**  
3 **(Declaratory Relief)**

4 91. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through  
5 90, inclusive.

6 92. Defendants deny failing to comply with applicable laws prohibiting  
7 discrimination against persons with disabilities in violation of the Americans with Disabilities,  
8 Act, Section 504 of the Rehabilitation Act, California Civil Code § 54, *et seq.*, and California  
9 Government Code § 11135, *et seq.*

10 93. A judicial declaration is necessary and appropriate at this time in order that each  
11 of the parties may know their respective rights and duties and act accordingly.

12 WHEREFORE, Plaintiffs pray for relief as set forth below.

13 **REQUEST FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for relief as follows:

15 1. A declaration that Defendants' failure to adequately plan to meet the  
16 emergency mass care and shelter needs of people with disabilities violates the Americans with  
17 Disabilities Act, Section 504 of the Rehabilitation Act, California Civil Code § 54, *et seq.*, and  
18 California Government Code § 11135, *et seq.*

19 2. An order and judgment enjoining Defendants from violating the Americans with  
20 Disabilities Act, Section 504 of the Rehabilitation Act, California Civil Code § 54, *et seq.*, and  
21 California Government Code § 11135, *et seq.*, and requiring Defendants to comprehensively  
22 survey the accessibility of all potential shelter sites and develop and implement a mass care and  
23 shelter plan that addresses the emergency needs of people with disabilities.

24 3. Plaintiffs' reasonable attorneys' fees and costs.

25 4. Such other and further relief as the Court deems just and proper.  
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27  
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1 RESPECTFULLY SUBMITTED,

2 DATED: October 1, 2007

DISABILITY RIGHTS ADVOCATES

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By:                     /s/                      
JENNIFER WEISER BEZOZA  
Attorneys for Plaintiffs

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DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
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